

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

| | | |
|-------------------------------|---|------------------------------|
| In the Matter of |) | CASE NO. OSAB 2002-16 |
| |) | Discrimination Complaint |
| KAY MIURA, |) | |
| |) | ORDER NO. 21 |
| Complainant, |) | |
| |) | ORDER DENYING DIRECTOR, |
| vs. |) | DEPARTMENT OF LABOR AND |
| |) | INDUSTRIAL RELATIONS' MOTION |
| PACIFIC OHANA HOSTEL, |) | FOR RECONSIDERATION OF FIND- |
| |) | INGS OF FACT, CONCLUSIONS OF |
| Respondent, |) | LAW AND ORDER |
| |) | |
| and |) | |
| |) | |
| DIRECTOR, DEPARTMENT OF LABOR |) | |
| AND INDUSTRIAL RELATIONS, |) | |
| |) | |
| Appellee. |) | |

ORDER DENYING DIRECTOR, DEPARTMENT OF LABOR AND
INDUSTRIAL RELATIONS' MOTION FOR RECONSIDERATION
OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On October 16, 2002, the DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS (Director), by and through his counsel, filed a Motion for Reconsideration of Findings of Fact, Conclusions of Law, and Order with the Hawaii Labor Relations Board (Board). The Director requested that the Board strike Finding of Fact ¶ 28 on page 7 and the last paragraph on page 9 through the first paragraph on page 11 of Decision No. 2. The Director contends that the Board should strike the "substantial factor" test from the Board's analysis because the Director did not use that test in his analysis of the case. Further, the Director contends that since neither party espoused a "shifting burdens" analysis, reference to "shifting burdens" in Decision No. 2 should be also stricken.


The Board conducted a hearing on the Director's motion on November 14, 2002. Counsel for the Director and Respondent's representative appeared and had full opportunity to present their arguments and respective positions to the Board.

Based upon a review of Decision No. 2, the record in this case, including the Director's Position Memorandum filed on August 22, 2002, and the arguments presented, the Board disagrees with the Director and maintains that the "substantial factor" and "shifting burdens" analyses are based on the record and were properly applied in this case. Thus, the


Board is not persuaded to reconsider and strike its Finding of Fact ¶ 28 and portions of its analysis in Decision No. 2 and accordingly, denies the instant motion for reconsideration.

DATED: Honolulu, Hawaii, November 15, 2002.

HAWAII LABOR RELATIONS BOARD


BRIAN K. NAKAMURA, Chair


CHESTER C. KUNITAKE, Member


KATHLEEN RACUYA-MARKRICH, Member

Copies sent to:

Herbert B.K. Lau, Deputy Attorney General
Kim Voigt
Kay Miura